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Agenda item 7
Human rights situation in Palestine and other occupied Arab territories

Joint written statement* submitted by the International Organization for the Elimination of All Forms of Racial Discrimination, the Arab Lawyers Union, the Arab Organization for Human Rights, International-Lawyers.Org, IUS PRIMI VIRI International Association and the Union of Arab Jurists, non-governmental organizations in special consultative status, and International Educational Development, Inc. and the World Peace Council, non-governmental organizations on the roster

The Secretary-General has received the following written statement, which is hereby circulated in accordance with Economic and Social Council resolution 1996/31.

[2 February 2018]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Please recycle

No Safe Haven: Palestinian Children under Israeli Military Occupation*

Children are afforded special safeguards and care under international law so as to foster their healthy individual development within society in a safe environment – in the spirit of the ideals proclaimed in the UN Charter, and in particular peace, dignity, tolerance, freedom, equality and solidarity. Such provisions are enshrined in, *inter alia*, the UDHR, CRC, ICCPR (in particular in articles 23 and 24), ICESCR (in particular in article 10), and in the relevant statutes and instruments of specialized agencies and international organizations concerned with the welfare of children. Yet, we witness that children are often the first victims of conflict, violence, and human rights violations. Palestinian children are among those whose most fundamental rights are violated on a consistent basis, as a result of Israel's prolonged belligerent occupation. This statement focuses on the most fundamental of rights: The right to life and safety.

Palestinian children's inherent rights to life and to grow up in a safe environment in which their human dignity is respected are infringed upon daily. Israel's military occupation and in specific its continued excessive use of force and military activities such as night raids and sieges show complete disregard for the lives and safety of innocent civilians, particularly children. Israel's military actions have an extremely negative impact on the physical and psychological wellbeing of Palestinian children.

Daily Military Activities and Settler Violence

Israel's militarization of public and private spaces pervades every aspect of life of Palestinian children living in the occupied West Bank, including East Jerusalem. Even the youngest children undergo "security checks" when passing by squads of Israeli soldiers and police, and often face acts of intimidation, harassment, and violence by the occupying forces. In 2015, Israel passed new laws with one order allowing its forces to shoot at anyone allegedly threatening the life of a third party and approved the arming of Israeli civilians. Palestinian children are fearful of the constant military presence and armament of Israel's civilian population, including settlers, especially in view of a rise in extrajudicial killings. These have already claimed many victims among Palestinian youth and children, resulting in traumatizing effects on those who survive. Soldiers invade villages at night and force people out of their homes for interrogation, resulting in a pervasive sense of insecurity among children who are woken up by armed soldiers or the sounds of sirens or gunfire in the middle of the night.

The imposition of movement restrictions such as checkpoints in the West Bank leads to infants being born on roadsides and causes death of infants and/or their mothers. Israel's military occupation becomes manifest in the lives of children through, *inter alia*, repeated attacks, raids and incursions, arrests, and systematic attacks against cultural and educational institutions, which result in psychological trauma and insecurity among children. Regardless of whether Palestinians initiate a cultural festival for children, hold a community gathering, or organize a peaceful demonstration, Israeli authorities and military forces can interfere at any time to shut down the assemblies or violently disperse them. Israeli forces employ live ammunition, rubber-coated bullets, and tear gas during demonstrations and military search and arrest operations, reportedly also against Palestinian children not posing any threat.

In East Jerusalem, Israeli authorities retain the power to close Palestinian institutions, public conferences and cultural events, including children's festivals, and impose censorship on Palestinian school books on grounds of alleged security risk and affiliation with the PA – as they did during their 2014 military action in Gaza. Under similar allegations, they impose punitive measures, such as summons and fines, on organizers, hosts and supporters of Palestinian civil society activities and schools. These measures further undermine children's right to education and to actively participate in their community.

Furthermore, hundreds of Palestinian children are in Israeli military detention and prosecuted in military courts, where they face ill-treatment, such as beatings, being hit with sticks, blindfolded, kicked and subjected to verbal abuse and threats of sexual violence by Israeli security forces, police, and border police.

Israel employs Palestinian children as human shields and informants. Israeli soldiers compel Palestinian children living in the occupied Palestinian territories to search bags or homes for people or suspect objects; make them convey messages or orders to Palestinian suspects; hold them inside buildings converted into military outposts to prevent attacks by Palestinian fighters; and force them to shield soldiers from stone-throwing during clashes in the absence of any protection for the children.

Settler violence continues to be a daily threat to life for Palestinian children. In the area of At-Tuwani in the South Hebron Hills, for instance, religiously extreme settlers continue to harass and attack Palestinian children, *inter alia*, by threatening and ambushing children, throwing stones, and beating them. Armed Israeli settlers carry out attacks against Palestinian civilians and property, *inter alia*, shootings, harassment, and destruction or damage of civilian property. This situation is exacerbated by Israeli public figures engaging in hate speech against Palestinians with complete impunity. In Israel's justice system, perpetrators of crimes against Palestinians are rarely held to account.

Military Operations

In direct contravention of the Fourth Geneva Convention, the Occupying Power continues to employ excessive and indiscriminate use of force, especially in its military campaigns in Gaza, resulting in deaths and injuries of Palestinian civilians, and in the destruction of property, vital infrastructure, and agricultural land.

Palestinian children continue to live in a climate of violence, particularly during explosions caused by rocket attacks, air strikes and shelling. During Israel's 2014 "Operation Protective Edge" in Gaza, many children were killed by indiscriminate shelling and drone and air strikes. The enforcement of access restrictions close to the border fence in Gaza also results in deaths among children. These outcomes are a direct consequence of the Israeli occupation and the failure of Israel to respect its obligations under international law.

Military operations entail grave violations of children's right to life, manifested, *inter alia*, through the reportedly deliberate killing by IDF of children in the 2008 military operation called "hot winter". Lethal force was used against unarmed Palestinians, including children[1], and indiscriminate shelling, including during excursions, lead to civilian death. Israel has hitherto failed to fulfill its legal obligation to investigate the killing of Palestinian children.

The IDF incursions in Gaza during "Operation Cast Lead" between 27 December 2008 and 18 January 2009 caused the killing of civilians, the demolition of residential structures, and the targeting of non-military objectives – attacks considered contrary to the principles of distinction and proportionality. This is reflected in the high numbers of civilian casualties, with at least a third of those killed being women and children. Israel conducted strikes on UN and medical facilities, buildings, vehicles and crews, employed weaponry containing phosphorous in densely-populated areas, and used Palestinian civilians as human shields. The operation resulted in the death of more than 1,400 Palestinians, with over 83 percent being civilians, including 342 children. 318 of these did not take part in hostilities.

During its large-scale, eight-day military offensive ("Operation Pillar of Defense") in the Gaza Strip from 14 to 21 November 2012, 165 Palestinians were killed, more than half of them civilians, and around 1,400 were injured, the majority of whom were believed to be civilians, including many children.

From 8 July to 26 August 2014, Israel launched "Operation Protective Edge", during which Gaza witnessed destruction on an unprecedented scale, causing a huge loss of life that disproportionately affected civilians. A massive damage to homes, infrastructure, hospitals and schools was a further consequence. Again, serious concerns were raised regarding the IDF's adherence to the legal principles of distinction, proportionality and precaution during attacks – which entailed a devastating impact on children. By 26 August 2014, 142 Palestinian families had three or more family members killed in the same operation. By the end of Israel's last major military operation in Gaza, 2,251 Palestinians were killed, of whom at least 1,492 were civilians, including 551 children[2].

1 Lethal force was used against children demonstrating or throwing stones, or who attempt to cross into Israel or escape arrest.

2 OCHA (2014). Fragmented Lives. Humanitarian Overview.

Conclusion

Palestinian children sink from one catastrophe into the next, which have a cumulative effect. As Avi Dichter, former head of the Israeli General Security Service, expressed in a statement on 21 May 2005: "When a Palestinian child paints a picture of the sky, there's always an Israeli helicopter there, too." Behind the numbers and terminology lie pervasive human hardship and suffering. Hardly a family in the OPT remains untouched by the untold suffering of daily exposure to a military force and devastating military operations. Families are traumatized by indescribable loss, with thousands of children having lost their parents, and a hundred thousand having lost their homes.

In the light of grave and systematic Israeli violations of the fundamental rights of Palestinian children as a special protected group of an occupied territory, we recommend to the UN and its relevant bodies to:

- Demand Israeli authorities to abide scrupulously by the State's obligations under the CRC in all territories under its control and to comply with the Fourth Geneva Convention;
- Pressure the Israeli authorities to cease its excessive use of force and to put an end to all military activities endangering the Palestinian civilian population;
- Urge the Israeli Government to end its policy of collective punishment against the Palestinian civilian population, particularly its destructive Gaza blockade;
- Demand Israel to immediately cease all killings and injuring of Palestinian civilians, adequately investigate all committed crimes, and bring perpetrators to justice;
- Compel Israel to abide by its obligations as a UN Member State, implement its international human rights obligations, and fully cooperate with relevant treaty bodies and human rights mechanisms, particularly with the fundamental provisions of equality and non-discrimination.

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Please recycle

Obstruction of Human Rights: United States of America Recognition of Jerusalem as Capital of Israel*

The status of Jerusalem has been a perennially sensitive issue in the context of the question of occupied Palestinian territories and the Middle East conflicts. The decision by the incumbent United States (US) government to relocate the US embassy from Tel Aviv to Jerusalem and thereby to recognize Jerusalem as Israel's capital on 6 December 2017 is inconsistent with international law, imperils any just and sustainable solution to the Palestine question, and poses a grave threat to peace, security, and stability in the region and beyond. With Jerusalem being the historically bustling cultural, social, political, and religious center of Palestine, the US decision threatens to permanently prejudge any future settlement, under which East Jerusalem is to be the capital of the Palestinian state. As a result of the move, tensions in the region are exacerbated and Palestinians witness an aggravation of their human rights situation.

Escalation in Violence

The recognition by the US has exacerbated the tensions in the region. As of 23 January 2018, 16 people have been killed across the Occupied Palestinian Territories (OPT), more than 2,900 have been injured, and more than 500 arrested. While Israeli occupation forces have a perennial presence in Palestinians' public and private spaces – with heavily armed soldiers occupying checkpoints, patrolling streets, 'guarding' illegal settlements, and searching homes and bodies for suspect objects – times of heightened tension see an escalation in Israeli military and police actions in the OPT.

The weeks since the US announcement have again been marked by a ruthless imposition of curfews, military raids and incursions in Palestinian neighborhoods, towns and villages in acts of collective punishment, which have resulted in injuries, killing, and detentions of civilians, including many children. New checkpoints and road closures have been installed, further obstructing the movement of Palestinians. On 24 December 2017, for instance, all entrances to Ramallah district were sealed. In response to a fatal attack on an Israeli settler near the illegal Israeli outpost of Havat Gilad on 9 January 2018, the Israeli army declared the area southwest of Nablus a military zone, and raided the Palestinian villages of Tell and Sarra. The erected blockades, sealed-off villages, and stringent inspections affect tens of thousands of innocent Palestinians.

Israel continues to violate the prohibition on collective punishment of an occupied people contained in article 33 of the Fourth Geneva Convention. The extensive deployment of Israeli troops in Palestinian population centers and neighborhoods entail systematic attacks on public and private property and infrastructure and systematic acts of intimidation, harassment, and violence. On 17 January 2018, Israeli forces declared Jenin closed military zone and imposed a large-scale operation including over 120 military vehicles, during which three homes belonging to the family of a "terror suspect" were demolished.

Unarmed Palestinian civilians face excessive use of force during demonstrations, which have increased in reaction to the US decision to formally recognize Jerusalem as Israel's capital, causing many injuries and deaths – including among minors. The use of rubber bullets, sponge bullets and tear gas, fired at protestors at close-range and above waist, has led to severe, often permanent injuries or death. In Gaza, fatalities and injuries have again increased due to Israeli air strikes and enforcement of access restrictions close to the border fence. Eight Palestinians were killed and at least 2,900 Palestinians, including at least 345 children, were injured in the OPT between 5 and 18 December alone. The lack of accountability of Israeli perpetrators shows tacit approval for killing and seriously injuring Palestinians.

A further worrying development is the Israeli government's proposed bill to facilitate the issuance of death penalties by judges for "terrorist activity", which has passed its preliminary reading in the Knesset on 3 January 2017 and is backed by the ruling coalition. The bill stipulates that death penalty is to be employed against anyone convicted of "terrorist activity" if a simple majority of two out of three judges in military court panels votes in favor. If passed, the bill would disproportionately target Palestinians, who fall victim to a discriminatory judicial system in which flawed rulings would then be fatal.

Illegal Settlement Expansion and Forced Displacement

The recognition by the US administration of Jerusalem as Israel's capital has emboldened the Israeli government to accelerate its settlement and annexationist policies. On 10 January 2018, Israel's Civil Administration's Higher Planning Council approved the construction of 1,122 new housing units in 20 settlements and outposts throughout the occupied West Bank. Additionally, it published tenders for 651 units on 11 January.

The new US administration's permissiveness vis-à-vis Israeli colonialist activities had already resulted in increased settlement consolidation in the year 2017: 6,742 construction units for settlements were reportedly approved, the highest number since 2013. The planning and implementation of a total of around 8,000 settlements units were advanced in the first half of 2017 alone, including over 3,000 recommended for "immediate construction". By contrast, 2,629 units were approved in 2016. Over the years, the development shown in 2017 will facilitate the move of over 30,000 Israeli settlers to the occupied West Bank, including East Jerusalem.1 To date, 600,000 settlers reside in the occupied West Bank and East Jerusalem. Around 208,000 settlers live on either partially or entirely private Palestinian property in East Jerusalem, with around 2,000 settlers residing in the midst of Palestinian neighborhoods under military protection.

On 31 December 2017, Israel's governing Likud party unanimously approved a draft resolution demanding the formal annexation of large parts of the occupied West Bank, in which unlimited construction of settlements would be advanced. Illegal settlements would move under Israeli sovereignty. This coincides with the proposed "Greater Jerusalem Bill", which aims to annex 19 illegal settlements, including the major settlements of Maale Adumim, Givat Zeev and Gush Etzion, to the Israeli-defined municipal boundaries of Jerusalem. This plan is in line with Israel's persistent legislative, judicative, and administrative steps to illegally change the character, status, and demographic composition of the Jerusalem to, *inter alia*, ensure a Jewish majority in the city. Accordingly, the bill would create "independent municipalities" for Palestinian neighborhoods cut off from Jerusalem by the Separation Wall.

Residency Rights in and Access to East Jerusalem

Demographic engineering in favor of a Jewish majority in Jerusalem, which amounts to ethnic cleansing, is enshrined in Israeli law and practice, in an effort to create facts on the ground to forestall final status agreements based on international law – which delineate East Jerusalem as the capital of an independent Palestinian State. Palestinian inhabitants of Jerusalem are allocated the status of "permanent residents", which does not entail a constitutional right to residency but is conditioned upon physical presence in Jerusalem (permanent domicile, "center of life") that must be constantly proven in interaction with the Israeli Interior Minister. It is therefore subject to expiration and revocation at any point in time on the basis of several discriminatory laws2. A stay abroad of over seven years or residence abroad may also imply the loss of the right to reside in Jerusalem. Almost 15,000 Palestinians have had their Jerusalem IDs revoked since 1967.

Jerusalem residency is transferred neither to children nor to spouses. Instead, Palestinians need to submit requests for family unification. These entail a long-winded and expensive bureaucratic process, at whose end the request may be denied. Moving to a neighboring West Bank village, results in the loss of residency rights for Palestinian East Jerusalemites.

The Separation Wall – constructed in a way to separate eight Palestinian Jerusalemite neighborhoods and to displace about a quarter of East Jerusalemite Palestinians at the West Bank side of the barrier, while partitioning villages, encircling towns, and splitting families apart – served as another strategy in the "de-Palestinization" of Jerusalem.

1 https://eeas.europa.eu/sites/eeas/files/eu_report_on_israeli_settlements_in_the_occupied_west_bank_including_east_jerusalem_january_-_june_2017.pdf

2 Such laws include the Passports Law (1952), the Entry into Israel Law (1952), the Nationality Law (1952), and the Entry into Israel Regulations (1974).

Those Palestinians cut off by the Wall lost their Jerusalem identity documents or risked losing them if they could not prove Jerusalem as their center of life.

Israel's discriminatory planning restricts the land zoned for Palestinians in East Jerusalem to only 13 percent, most of which is already built-up. Forced to construct homes without the hardly obtainable building permits, over 100,000 Palestinian residents are at constant risk of forced displacement. Eviction and forcible displacement of Palestinians has escalated in 2017 and is likely to increase even further in 2018. During the past year, Israeli authorities demolished 142 structures in East Jerusalem, particularly in Jabal Mukabbir, Beit Hanina, al Isawiya and Silwan, under the pretext of lacking building permits. As a result, 233 people were displaced, including 133 children, and 631 people were negatively affected3.

The constant threat of land seizure, home demolition, and eviction creates a coercive environment, which is exacerbated by Israel's discriminatory provision of basic services and resources to the Palestinian population of the City. Although Palestinians pay taxes, the Jerusalem municipality's budget allocation is highly discriminatory. Palestinian neighborhoods in East Jerusalem are neglected by the municipality, with basic services such as education, healthcare, waste removal, running water, and road maintenance being extremely limited. Those Palestinian neighborhoods cut off from Jerusalem by the Wall, such as Kufr Aqab and Shuafat refugee camp, suffer from almost complete neglect – with the population being subjected to water shortage, serious health hazards due to the burning of rubbish, and debilitated infrastructure.

Palestinians' access to their historically bustling center is today extremely restricted. Israel has entrenched an intricate system of permits, checkpoints, and the Separation Wall to cement control over the City and further isolate Jerusalem from Palestine. Even those Palestinians in possession of the required IDs but cut off by the Wall need to take circuitous routes, circumvent physical barriers, and pass through congested checkpoints (whilst settlers can access bypass roads). Some Palestinians may be able to see the Old City of Jerusalem from their windows. Yet, if they are in possession of the required permit, they are forced to endure a trip of two hours to reach it.

On 2 January 2018, Israel passed a new bill determining that a two-third majority is required in the Knesset before Israel can relinquish control over any part of Jerusalem to a foreign entity. The intent is to impede any future relinquishment of illegally annexed East Jerusalem to the Palestinian Authority. The bill furthermore provides for the removal of the Palestinian neighborhoods of Kufr Aqab and the Shuafat refugee camp from the jurisdiction of the Jerusalem municipality.

Conclusion and Recommendations

Whereas the US decision to officially recognize Jerusalem as capital of Israel can be viewed as attempt to legitimize Israeli control over the remaining Palestinian territory and to undermine Palestinians' legitimate historic, national, and legal rights in Jerusalem, it does not change the internationally recognized status of Jerusalem, according to which East Jerusalem is illegally occupied and is the future capital of Palestine. Given that the US move further contravenes international law and further deprives Palestinians of their inalienable rights, the signatories to the statement reaffirm in the strongest manner that the UN, its relevant bodies, and UN Members States must take all necessary measures to:

- Pressure the US to rescind its decision to move its embassy and recognize Jerusalem as capital of Israel;
- Finally bring an end to the prolonged occupation of Palestine and fulfill Palestinians' right to national self-determination, which involves the end of all settlement activity and the blockade on Gaza;
- Ensure the immediate end to all Israeli policies and practices aimed at altering the character, status, and demography of occupied Palestine, particularly East Jerusalem;

3 https://www.ochaopt.org/content/high-numbers-demolitions-ongoing-threats-demolition-palestinian-residents-east-jerusalem

- Urge Israel to cease its discriminatory planning, development, and land system in occupied Palestine and within Israel and to rescind all policies and practices resulting in the forced eviction and transfer of Palestinians, including demolitions, confiscations, and the creation of a coercive environment;
- Demand Israel to comply fully with the provisions of the advisory opinion of the International Court of Justice and thus to dismantle the Separation Wall.

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Please recycle

Forcible Repatriation of Rohingya: Disregard to the International Prohibition of Refoulement*

The situation of Rohignya Muslim minority of Myanmar remains encreasingly alarming. The mass atrocities against Rohingya continue to these days despite the international calls for immediate halt of violence. As a result of army crackdowns in Myanmar's northern Rakhine state in 2016 and 2017, approximately 750,000 Rohingya fled to Bangladesh. The UN High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, referred to the abuses and persecution as "textbook example of ethnic cleansing". The widespread, systemic, organised discrimination and criminal acts committed against Rohingya with an obvious intent to destroy this group may amount to the international crime of genocide. The persecution of this ethnic group since 1982 in combination with hatred rhetoric and widespread violence against them since 2012 fulfil the elements of genocide as defined by the Rome Statute of the International Criminal Court and the Genocide Convention.

On 16 November 2017, the governments of Bangladesh and Myanmar signed repatriation agreement, according to which the Rohingya refugees in Bangladesh will be repatriated back within two years. It is estimated that nearly 1 million Rohingya live in Bangladesh, including those who came after previous displacements. It is reported that Myanmar has agreed to accept 1,500 Rohingya each week (300 persons every day), though Bangladesh insisted on 15,000 every week. The agreement covers Rohingya who fled to Bangladesh following the attacks in October 2016 and August 2017. Myanmar said that the deal was based on repatriation pact of 1992-1993 between the two countries that followed a previous round of violence. The permanent secretary of Myanmar's ministry of labour, immigration and population, Myint Kyaing, said his country would accept people with identity documents issued by government in the past. Refugees would have to fill in forms with names of family members, previous addresses in Myanmar, birth dates and a statement of voluntary return.

It is unclear if refugees would be forced to return against their will from camps in Bangladesh to so called "temporary accomadation", which will most likely be prison-like camps in Myanmar that Rohignyas have already experienced during the past returns. Both countries affirm that the repatriation will be voluntary. However, Rohingya refugees are very clear that they will return to Myanmar only if their safety is assured by the international community, their lands returned and houses rebuilt, if they are granted Myanmar citizenship and no longer subject to discrimination and persecution. These conditions are not in place in Myanmar. Moreover, Rohingya refugees were not consulted whatsoever throughout the planning of their return. Bangladesh agreed to repatriate refugees back to the state-sponsored system of apartheid that is still in place in Myanmar.

Refoulement is an absolute prohibition under international human rights and refugee law. The most essential component of the principle of non-refoulement is to protect refugees and asylum seekers againt return to a country where a person has reason to fear persecution or risk to his life. The prohibition of forced repatriation is set forth by the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Convention Relating to the Status of Refugees. Eventhough, neither Bangladesh nor Myanmar ratified the conventions on refugees, the protection of non-refoulement provisions are considered absolute rights and international custom. Forcible return is a violation of international law.

The repatriation deal between Bangladesh and Myanmar is not fully formed and may bring more human rights violations against the Rohingya minority. Firstly, the main condition that must be met before any repatriation plan is implemented - an unconditional end to the violence and guarantees of non-recurrence. At the special session of the UN Human Rights Council on 5 December 2017, the Chair of the Fact-Finding Mission on Myanmar, confirmed that "while there are signs that the violence has abated in Rakhine, it has not stopped." It was reported that villages were still being burned in Maungdaw and Buthidaung townships as recently as 25 November. "At present, conditions in Myanmar's Rakhine state are not in place to enable safe and sustainable returns. Refugees are still fleeing, and many have suffered violence, rape, and deep psychological harm," said Adrian Edwards, a spokesperson for the office of the UN High Commissioner for Refugees (UNHCR). Moreover, the Commander-in-Chief of the Myanmar Armed Forces, General Min Aung Hliang, gave clear message that the crackdown would not ease off as it was "unfinished business from

WWII".1 Bangladeshi officials spoke of a need to establish "safe zones" inside Myanmar. The world witnessed past unfortunate experiences of so called safe-zones in other conflicts – for example, Bosnia-Herzegovina (1993) and Sri Lanka (2009). Therefore, this suggestion is hardly an option.

Secondly, we are seriously concerned that refugees and international agencies, including the UN, are excluded from all stages of this repatriation. Rohingya should play a key role in planning and management of their return. In addition, there is a need for international and UN oversight of any repatriation process. UN refugee agency's role was not included in this bilateral repatriation plan. Since the current repatriation deal affords no role for the UN refugee agency, it casts serious doubts if international standards would be observed during this process. The affirmation that this return should be settled exclusively between the government of Myanmar and Bangladesh due to sovereignity notion is unacceptable. The United Nations General Assembly has recognized that if states fail in their duty to protect the security of individuals, it becomes a wider regional, and ultimately international obligation. Thirdly, the required verification process is contentious. The Myanmar authorities denied the Rohignya citizenship and deprived them of other possibilities to prove their identity for decades. In these circumstances, it is unreasonable to expect Rohingya refugees to present the nessecary documents for voluntary repatriation.

Lastly, we are mindfull of previous repatriations of tens of thousands of Rohingyas to Myanmar in the 1990s and early 2000s. "An estimated 240,000 Rohingyas were repatriated by the Bangladesh government under the 1978 agreement, which had a six-month time limit. After that, Bangladesh repatriated about 236,000 Rohingyas until 2005 under the 1992 agreement," noted President Zafar Ahmad of Myanmar Ethnic Rohingya Human Rights Organization.2 These large-scale repatriation operations with the UNHCR's assistance have returned Rohingya to experience a repetition of discrimination and violence against them. At the time, rights groups raised concern that people were forced back against their will and the UN was sidelined during that process. As documented by UNHCR in the early 1990s, less than ten percent of Rohingya surveyed at the time expected to return to safe conditions in Myanmar. However, Bangladesh pushed them back across the border despite all the refugees' efforts against repatriation. Those displacement camps established for mainly Rohignya returnees became the open-air prisons of deplorable conditions with limited freedom of movement and restricted access to international aid agencies.

RECCOMENDATIONS

- We call for the UN to further insist that Myanmar accedes without delay or reservation to key international human rights treaties and their additional protocols, including to the International Covenant on Civil and Political Rights, the UN Convention on the Elimination of All Forms of Racial Discrimination, the 1954 Convention relating to the Status of Stateless Persons, the 1961 Convention on the Reduction of Statelessness and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Convention Relating to the Status of Refugees, the Rome Statute of the International Criminal Court and implement their provisions in law, policy and practice;
- We call on Myanmar to implement without delay all of the relevant provisions included in the HRC Resolution A/HRC/S-27/L.1 and the recommendations of the Advisory Commission on Rakhine State aimed at improving the human rights situation and ending discrimination;
- Myanmar should immediately repeal discriminatory legislative and policy measures targeting religious and ethnic minorities, lift restrictions on movement that impede access to health and education services, intensify its efforts to address discrimination, to counter incitement to hatred and hate speech leading to violence and it should enact legislation and implement policies to grant Rohingya the Myanmar nationality;

1 *"Myanmar Says Clearing of Rohingya Is Unfinished Business From WWII"*, September 2017 at *https://www.wsj.com/articles/myanmar-army-chief-defends-clearing-rohingya-villages-1504410530*

2 *"Rohingya must be consulted before repatriation"*, *Adam Bemma, 25 November 2017 at http://www.aljazeera.com/news/2017/11/rohingya-consulted-repatriation-groups-171125094810411.html*

- Myanmar should ensure safe, voluntary and sustainable return of refugees to their place of origin in accordance with international standards;
- Myanmar should grant full access to the UN fact-finding mission and international humanitarian aid workers, observers and journalists to conflict areas, especially Rakhine State;
- UN should ensure that Rohingya refugees are not forced back to Myanmar as long as they remain at risk of serious human rights violations. Repatriation should take place under the supervision of international and national human rights monitors and the relevant UN agencies;
- The situation in Myanmar should be referred to the International Criminal Court.

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Democratic Space, Civil Society and Political Crisis in Burundi*

The democratic space in Burundi has continuously shrunk since 2013 and the political crisis has continued to worsen. Since Burundian President Pierre Nkurunziza in 2015 took a third term in office Burundi fell into political and civil turmoil that escalated to serious human rights abuses and violations. To date and as illustrated in the Report of the Office of the High Commissioner for Human Rights to the Third Cycle of the Universal Periodic Review for Burundi, there have been enforced disappearances, extra-judicial killings, as well as, numerous serious human rights abuses including violations by ruling party's youth league, Imbonerakure, such as sexual violence.

In addition, the current government of Burundi has left several critical international bodies such as the Rome Statute of the International Criminal Court and has weakened its cooperation with the Human Rights Council in so far as denying the Commission of Inquiry on Human Rights in Burundi access into the country.

The current government has also taken several legal and non-legal steps to silence any opposition especially by the media. This statement condemns such actions by the very authorities that are supposed to protect a democratic and civil society to freely express their opinions in a non-violent manner. Moreover, similar legal and non-legal measures were taken to prevent civilians' right to freedom of assembly and association. These actions have led to escalated violence including detentions, and even reports of enforced disappearances and torture particularly towards journalists.

Democratic Space and Political Crisis

The state of Burundi, like any other state, has an obligation to respect, protect, and fulfil all human rights, which includes the freedom of information, freedom of association and expression, and freedom of assembly. However, in June 2013 the government of Burundi passed a law that prohibited journalists from publishing stories that undermined the government. The law bans the publication of stories about "national defence, public safety, state security, and the local currency" thus limiting the right to freedom of information in Burundi.1

This was an unconstitutional and unlawful move among many others that the government of Burundi has enacted in order to keep the current President, Pierre Nkurunziza, in power by serving a third term as president of Burundi. After decades of a deadly civil war that dates back to 1993, which devastated the country leaving millions of Burundians dead and many more displaced across the globe a peace agreement was established under the "Arusha Peace and Reconciliation Agreement for Burundi" signed on 28 August 2000 that was mediated by the late President Julius Nyerere and President Nelson Mandela. The Arusha Peace Agreement served as a fundamental corner stone for the conception of the Burundi Constitution. Both the Arusha Agreement and the Constitution of Burundi stipulate that an elected president will serve a term of five years renewable for a maximum of a second term.

The Arusha Peace Agreement states that:

"She/he [i.e., the president] shall be elected for a term of five years, renewable only once. No one may serve more than two presidential terms."

Burundi's Constitution of 2005, Article 96, states:

"The President of the Republic is elected by universal direct suffrage for a term of five years renewable one time."

1 https://www.reuters.com/article/burundi-rights/burundi-enacts-media-law-that-reporters-say-curbs-press-freedoms-idUSL5N0EG3FZ20130604

Despite these clear provisions President Nkurunziza announced in 2015 that he would seek another term, which would effectively be his third presidential term. As expected civil society challenged the general elections upon this claim but were systematically shut down. As mentioned above the government of Burundi began silencing civil society and taking away Burundians freedom of information, freedom of association and expression, and freedom of assembly since 2013. These inalienable rights are essential freedoms for civilians to exercise in order to be active participants in civil, social, and political life. Further, the new law gave the administration the power to ban peaceful assembly on ambiguous information. This is a clear demonstration of the failure of good governance and in direct violation of the Arusha Peace Agreement and the Burundi Constitution of 2005.

In October 2013 the Council of Ministers of Burundi adopted a bill containing a number of amendments to the Constitution, one of which was to increase a president's possible term from two to four presidential terms per individual.

The proposed amendment itself goes against the Arusha Peace Agreement and the Constitution of Burundi as it states that:

"No procedure of revision may be retained if it infringes the national unity, the cohesion of the Burundian People, the secularity of the State, the reconciliation, the democracy or the integrity of the territory of the Republic."

Thus, this act alone puts the Arusha Peace Agreement in jeopardy and is counterproductive to the efforts and commitments made by the people and leaders and as many warned would regress or disrupt the progress made since 2000 when the Arusha Peace Agreement was signed. Moreover, due to the response of civil society it is clear that the proposed amendment infringed on the cohesion of democracy, the integrity of the territory of the Republic, and the peace of Burundian people.

After the amendment was rejected President Nkurunziza insisted that his first term "resulted from universal indirect suffrage (legislature) rather than universal direct suffrage (popular vote) and therefore should not be counted"2. However, on May 4th, 2015 the Constitutional Court ruled that the president seeking a third term is constitutional but after deliberating and analysing the Court's reasoning, it would appear that the decision was controversial as it contained fundamental contradictions.

Before and during the debates regarding a third term for President Nkurunziza civil society space in Burundi had already began to shrink. For instance, in 2013, new restrictive laws on the press, assemblies, and public demonstrations were introduced. One of the provisions regarding the press was that journalists had to reveal their sources of information. Moreover, groups wanting to hold meetings and organize demonstrations concerning political developments and state accountability on human rights were arbitrarily denied authorisation. It was reported that the Office of the High Commissioner for Human Rights (OHCHR) had documented over forty cases where the rights for peaceful association and assembly were denied between January and September 20143, as well as, in 2015 arrests and prohibitions towards gathering in public to demonstrate against the government.

Freedom of association, assembly, expression and opinion is guaranteed under Article 31 and Article 32 of the Constitution of the Republic of Burundi stating:

"Freedom of assembly and association shall be guaranteed, as well as the right to form non-profit associations or organizations in conformity with the law."

Furthermore, the constitution incorporates Article 19 and the International Covenant on Civil and Political Rights (ICCPR) both of which guarantee the right to peaceful assembly in the Republic of Burundi.

2 http://www.icnl.org/research/journal/vol19iss1/Vital%20Nshimirimana%20and%20Audace%20Gatavu.pdf
3 Ibid.

Despite these provisions to ensure the promotion and protection of freedom of expression and the right to peacefully assemble the government of Burundi has enacted legal constraints, threats, violence and arbitrary arrests towards journalists, disappearances, detentions, suspension of permits4, banning of websites and the shutting down of radio stations and the internet including social media5, and even burning down newspaper offices, cutting down radio signals, and destroying facilities. These are clear attempts to silence the voices of those in opposition or any criticism towards the current government of Burundi. As a result, many citizens have turned to alternative media outlets, specifically, social media, for news and information, which, can sometimes include propaganda, misinformation, or unverified sources. As well, the ban on protests and on citizens to freely assemble has provoked a series of unrests in the country and has also contributed to clashes between police forces and demonstrators even in the presence of children6.

Recommendations:

The UN Human Rights Council should:

- *Assist* and *support* in any capacity the peaceful Civil Society Organisations that have held campaigns in support and protection of the Constitution of Burundi (2005) and the Arusha Peace Agreement (2000), opposing the government of President Pierre Nkurunziza for changing the constitution and seeking an un-constitutional third term.
- *Encourage* the international community to provide safe refuge for media workers under severe threat in Burundi.

The government of Burundi should:

- *Promote, protect, and ensure* people's freedom of expression and freedom of peaceful assembly in Burundi.
- *Release* all detained journalists and *permit* the Burundian Union of Journalists to freely operate.
- *Respect* and *adhere* closely to the Arusha Peace Agreement.
- *Rebuild* communication and cooperation with the Office of the High Commissioner for Human Rights (OHCHR).

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*Geneva International Centre for Justice (GICJ), The Arab Lawyers Association-UK, The Brussells Tribunal, Euro-Mediterranean Human Rights Monitor, Association of Humanitarian Lawyers (AHL), The Iraqi Commission for Human Rights (ICHR), Association of Human Rights Defenders in Iraq (AHRD), General Federation of Iraqi Women (GFIW), Organisation for Justice & Democracy in Iraq (OJDI), The Iraqi Centre for Human Rights, International Anti-Occupation Network (IAON), NGOs without consultative status, also share the views expressed in this statement.

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4 https://cpj.org/africa/burundi/

5 http://www.bbc.com/news/world-africa-32512668

6 http://www.icnl.org/research/journal/vol19iss1/Vital%20Nshimirimana%20and%20Audace%20Gatavu.pdf